made default in the payment of rent, and finally the lessor resumed possession. This was an action against a surety, on a bond conditioned for the performance of the lessee's covenants, to recover the amount of the rent that accrued while the lessee was in actual possession. The court, Vann, J. dissenting, affirms the judgment for the plaintiff, going squarely on the theory that the lessee was liable to this extent on the lease. In delivering the opinion of the majority, Andrews, C. J., says, "We think the demands of public policy are fully satisfied by holding that, as to the public, the lease was void, but that, as between the parties, so long as occupation under the lease continued, the lessee was bound to pay the rent, and that its recovery may be enforced by action on the covenant." This is not affected by the *quasi* public nature of the corporation. Whether a lessee can escape further liability on the lease by abandoning possession is left an open question.

This decision throws additional light on the court's view of the requirements of public policy. Direct proceedings by the State afford sufficient remedy for violations of the charter, while honesty and fair dealing demand that payment should be made for benefits received. To reach this result by implying a contract, after holding the actual contract void, is mere evasion. This result is in line with the position taken by Mr. Morawetz. As the elements of contract are present and there is no illegality in the proper sense, to allow recovery on the contract where either party has performed best satisfies the requirements of public policy. Until there is performance the contract is voidable. 2 Morawetz, Corp., §§ 650, 685, 689.

But where shall the line be drawn? If the contract is good in part, will the court give damages for breach of the unexecuted part? If so, what performance will be required to bring about this result? It has often been said that performance cannot give validity to that which is void in its inception. Mr. G. W. Pepper, in an article in 9 HARVARD LAW REVIEW, 255, 269, points out theoretical difficulties that confront a court, which, taking this view of public policy, is yet unwilling to hold all corporate contracts binding upon the parties.

CONDITIONS IN RESTRAINT OF MARRIAGE. — A condition annexed to a testamentary gift, to the effect that, if the donee marries, the property shall vest in another, is void as against public policy, and the gift is treated by the courts as absolute. Stated in its baldest form, the rule is this, that conditions in general restraint of marriage are illegal. Simple and intelligible as this appears at first sight, the subtleties it has given rise to are endless. For example, one who explores the mysteries of the doctrine meets at the outset a well established exception. If the gift is to a widow or widower the condition is valid, that is, the rule does not apply to second marriages. An illustration of this is to be found in the late Tennessee case of *Herd* v. *Catron*, 37 S. W. Rep. 551, where a testator devised land to his widowed daughter with a proviso that, if she married again, the land should go to her son. She did marry, and the court held that the gift over took effect. The reason for the general rule is of course to be found in the injury which the promotion of celibacy inflicts upon the state. The prevention of second marriages is naturally not deemed such an injury, and this exception to the rule is universally recognized.

Difficult questions often arise in determining what is a "general" re-

straint of marriage. While conditions against marrying without consent (*In re Smith*, 44 Ch. D. 654), or before some reasonable age (*Yonge* v. *Furse*, 8 D. M. & G. 756), or against marriage with a person of a certain nationality (*Perrin* v. *Lyon*, 9 East, 170), are valid, a condition against marrying any man who is not seised of a freehold worth £500 a year has been held to be too general, and therefore void (*Keily* v. *Monck*, 3 Ridg. P. C. 205). All that can be said is that the condition, even if not in complete restraint of marriage, must not *unreasonably* restrict the freedom of the donee. Story, Eq. Juris. § 280.

Although the condition be not expressed in so many words, if the natural operation of the gift is to restrain marriage, courts will treat the implied condition as illegal to the same extent as an express condition. But in cases of provision for support until marriage, they will not be astute to imply such a condition. A *bona fide* bequest during celibacy is good; "for the purpose of intermediate maintenance will not be interpreted maliciously to a charge of restraining marriage." *Scott* v. *Tyler*, 2 Dick. 712, 722.

The most refined subtlety in the whole doctrine, however, is to be found in the so called *in terrorem* principle. In case of gifts of personal property, where there is a condition subsequent, which is only in partial restraint of marriage, and hence is valid in itself, and there is no gift over, courts have held that the failure to dispose of the residue of the property shows that the condition was inserted by the testator merely for the influence it might have on the donee, to alarm him, as it were, and have refused to allow a forfeiture in case of breach. This doctrine "explores in slippery places," and the reasons given for it savor of excessive refinement. Schouler on Wills, § 603. The entire subject of conditions in restraint of marriage is well treated in 2 Jarman on Wills, 5th ed., 885–898; and in the note to *Scott* v. *Tyler*, 2 White & T. Lead. Cas. Eq., 5th ed., 179–205.

THE BRAM TRIAL. — The case of *United States* v. *Bram* will stand as one of the great murder trials of the day. From the night in July, when the triple murder on the barkentine Herbert Fuller was committed, to the conclusion of the trial before the United States Circuit Court at Boston there has been a succession of sensational incidents. An atmosphere of mystery, not yet entirely dispelled, has enveloped the whole affair. It is not surprising that a large portion of the New England public became absorbed in the reports of the proceedings as in a matter of almost personal moment. Those who attended the trial received impressions not soon to be forgotten. Unusual circumstances gave vivid color to the remarkable case; — the trying position of the young passenger, the dazed uneasiness of the sailor witnesses, the striking personal appearance of the defendant, and his admirable bearing on the witness stand during the ordeal of long cross-examination. Legally the most salient features were the endeavor of the defence to have excluded the testimony of the principal witness for the prosecution, and the attempt of the government to show motive by evidence of occurrences entirely unconnected with the case in point of time and surroundings. Most remarkable and interesting of all was the verdict of "Guilty" reached by the jury after twenty-six hours of deliberation, and in light of the fact that no reason for the crime had been presented. The strong popular disapproval of the result